



SDMS DocID

2052704

OFF

12/14/84  
FBI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
Regional Enterprises Site	)	
Hopewell, Prince George County,	)	U.S. EPA Region III
Virginia	)	CERCLA Docket No.
	)	III-95-62-DC
	)	
Regional Enterprises, Inc.	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA, 42
Respondent	)	U.S.C. § 9622(h)(1)

---

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D.

2. This Agreement is made and entered into by EPA and Regional Enterprises, Inc. ("Settling Party"). The Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Regional Enterprises Site ("Site") located at 410 Water Street, Hopewell, Prince George County, Virginia.

4. In response to the release or threatened release of a hazardous substances at or from the Site, EPA undertook response action at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. The Site was a chemical storage facility consisting of eighteen storage tanks on approximately 10 acres of land.

6. Approximately 40,000 gallons of 97 percent sulfuric acid spilled into approximately 100,000 gallons of collected rainwater. The mix then flowed within bermed containment into an adjoining dike surrounding a 50-year-old one-million-gallon oil storage tank, where it was corroding the base of the tank. The

ORIGINAL  
FILED  
OFF

edge of this berm was located within 30 feet of the James River.

7. The PRP, Regional Enterprises, Inc., attempted to clean up the spill, but contacted local officials for support. Virginia Department of Emergency Services then contacted EPA for assistance.

8. In performing this response action, EPA incurred response costs at or in connection with the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

9. EPA alleges that the Settling Party is the responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred at or in connection with the Site.

10. The Settling Party is a "person" within the meaning set forth in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

11. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. The Regional Administrator of EPA Region III, or his/her delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

13. EPA and the Settling Party desire to resolve the Settling Party's alleged civil liability for Past Response Costs as defined in Paragraph 16(h) without litigation and without the admission or adjudication of any issue of fact or law.

14. EPA has determined that this Agreement is fair, practicable and in the public interest.

### III. PARTY BOUND

15. This Agreement shall be binding upon EPA and shall be binding upon the Settling Party and his heirs, successors and assigns. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### IV. DEFINITIONS

16. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations

OFF  
10/14/94

promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached here to, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).<sup>1</sup>

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Site through June 22, 1994, plus accrued Interest on all such costs through such date.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Party" shall mean Regional Enterprises, Inc.

k. "Site" shall mean the Regional Enterprises Superfund Site, encompassing approximately 10 acres, located at 410 Water Street, Hopewell, Prince George County, Virginia.

---

<sup>1</sup>The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year. The rate for October 1, 1994 through September 30, 1995 is 5.63%. The rate for October 1, 1995 through September 30, 1996 is 5.85%.

JFE

**V. REIMBURSEMENT OF RESPONSE COSTS**

17. The Settling Party shall pay to the EPA Hazardous Substance Superfund \$12,878.29 (consisting of Regional Payroll Expenses of \$3,982.29 plus Indirect Costs of \$8,896.00) in reimbursement of Past Response Costs, plus an additional sum for Interest on that amount calculated from the date set forth in the definition of Past Response Costs through the date of payment. Payments shall be made as follows:

a. Within 1 year of the effective date of this Agreement, the Settling Party shall pay a principal payment of \$6439.15, plus interest;

b. Within 2 years of the effective date of this Agreement, the Settling Party shall pay the balance of \$6439.14, plus interest.

18. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 03-7D, and the EPA docket number for this action, and shall be sent to:

U.S. EPA - Region III  
Attention Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

19. At the time of payment, the Settling Party shall send notice that such payment has been made to:

Lydia Guy  
Docket Clerk (3RC00)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

and

Margaret M. Cardamone (3RC23)  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

**VI. FAILURE TO COMPLY WITH AGREEMENT**

20. In the event that any payment required by Paragraph 17 is not made when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

21. If any amounts due to EPA under Paragraph 17 are not paid by the required date, the Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 20, \$500.00 per violation per day that such payment is late.

PFE

22. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 18 and 19.

23. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

24. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if the Settling Party fails or refuses to comply with any term or condition of this Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

25. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

#### VII. COVENANT NOT TO SUE BY EPA

26. Except as specifically provided in Paragraph 27 (Reservations of Rights), EPA covenants not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Sections V (Reimbursement of Response Costs) and VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

7/1

-12

VIII. RESERVATIONS OF RIGHTS BY EPA

27. The covenant not to sue by EPA set forth in Paragraph 26 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against the Settling Party with respect to all other matters, including but not limited to:

a. liability for failure of the Settling Party to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs; and

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606.

28. The covenant not to sue by EPA set forth in Paragraph 26 does not in any way restrict the authority of EPA, or agencies or instrumentalities of the United States other than EPA, to take any action, civil or criminal, administrative or judicial, against the Settling Party, including but not limited to, actions pertaining to:

a. criminal liability; or

b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

29. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

30. The Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; and

b. any claims arising out of the response actions at

the Site for which the Past Response Costs were incurred.

31. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

**X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

32. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. EPA and the Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

33. EPA and the Settling Party agree that the actions undertaken by the Settling Party in accordance with this Agreement do not constitute an admission of any liability by the Settling Party. The Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

34. The Parties agree that the Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs as defined by Paragraph 16(h).

35. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

36. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon

the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 26.

#### XI. RETENTION OF RECORDS

37. Until 5 years after the effective date of this Agreement, the Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the document retention period in the preceding paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, the Settling Party shall deliver any such records or documents to EPA. The Settling Party may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor.

39. By signing this Agreement, the Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or



control of the Site, or to the ownership, possession, generations treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information concerning the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and 9622(e). Provision of false, fictitious, or fraudulent statements or representations to the United States may subject a Settling Party to criminal penalties under 18 U.S.C. § 1001.

## XII. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and the Settling Party.

### As to EPA:

Margaret M. Cardamone (3RC23)  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

### As to Settling Party:

Timothy G. Hayes, Esquire  
Williams, Mullen, Christian & Dobbins, P.C.  
1021 East Cary Street  
P.O. Box 1320  
Richmond, VA 23210-1320

## XIII. COMPLETE AGREEMENT/APPENDICES

41. This Agreement and its appendices shall constitute the entire agreement of the Parties. The following appendices are attached to and incorporated into this Agreement: Appendix A is the Cost Summary Report showing the Regional Payroll Expenses and the Indirect Costs.

104  
JFK

XIV. PUBLIC COMMENT

42. This Agreement shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. EFFECTIVE DATE

43. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 42 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

Regional Enterprises, Inc.

By: \_\_\_\_\_

W. Gary Farrar, Jr.  
President

\_\_\_\_\_

Date

U.S. Environmental Protection Agency

By: \_\_\_\_\_

W. Michael McCabe  
Regional Administrator

\_\_\_\_\_

Date

APPENDIX A  
COST SUMMARY REPORTS